ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.[2]
SUPREME COURT OF OHIO.[3]
SUPREME COURT OF VERMONT.[4]

ADMIRALTY.

Responsibility of Ship-owners.—Owners of ships appoint the master and employ the crew, and consequently are, as a general rule, held responsible for the conduct of both in the navigation of the vessel: *Robert* v. *Propeller Galatea, &c.*, S. C. U. S. Oct. 1875.

Exceptions exist to that rule in certain cases, as where the craft is one without sails or steam apparatus, or where the difficulties of the navigation make it necessary to employ a steam-tug and to turn over the control and navigation of the ship to the master and crew of the latter vessel: *Id.*

AGENT.

Authority of.—An agent was employed for buying goods for the principal, and selling them at the principal's store. Written articles of agreement between them stipulated that the principal would furnish capital, or authorize the agent to obtain credit on the principal's name and responsibility, for the purchase of said goods, to an amount not exceeding $4000; that all such purchases should be in the name of the principal, and should not exceed, in cash down and on credit, the sum specified, unless by express consent of the principal; and that, acting within said limits, and to the extent of said capital, in the legal and proper transactions of said business, the agent's acts should be binding on the principal. *Held*, that the agent was not authorized by said agreement to borrow money on the credit of the principal: *Spooner* v. *Thompson and Wife*, 48 Vt.

And if money borrowed by the agent on the credit of the principal without authority, goes into the principal's business without the latter's knowledge, and the principal has the benefit thereof, yet the principal is not liable therefor to the person of whom it was borrowed, in the absence of a promise to pay: *Id.*

BANKRUPTCY.

Preference of the United States.—The United States is a preferred creditor as to the separate and individual assets of bankrupt partners: *Lewis, Trustee*, v. *The United States*, S. C. U. S. Oct. 1875.

The separate property of each partner is alike liable to execution with

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[1] Prepared expressly for the American Law Register, from the original opinions. The cases will probably be reported in 1 or 2 Otto.

[2] From J. M. Shirley, Esq., Reporter; to appear in 56 New Hampshire Reports.

[3] From E. L. De Witt, Esq., Reporter; to appear in 26 Ohio St. Reports.

[4] From Hon. J. W. Rowell, Reporter; to appear in 48 Vermont Reports.

the property of the partnership, and equity will not interfere unless there are cogent special circumstances for it to do so: *Id.*

Where there are joint debtors and one is beyond the reach of the process of the court, and equity has jurisdiction, a decree may be taken against the other for the whole amount due: *Id.*

It is a settled principle of equity that a creditor holding collaterals is not bound to apply them before enforcing his direct remedies against the debtor: *Id.*

Bills and Notes.

Alteration—Renewal—Discharge of Sureties.—Calhoun as principal, and Lucas and Blessing as his sureties, made their promissory note to a bank, and at its maturity the bank agreed to give further time, if Calhoun would procure Boteler to sign the note in place of Blessing; thereupon Calhoun, with the consent of the bank, took the note to Boteler, and by falsely representing to him that Lucas had consented to the extension of time, procured Boteler to erase the name of Blessing and sign his own name in its place, and then redeliver the note to the bank, representing to the cashier that Lucas had agreed to the arrangement—*Held:* 1. That this was equivalent to the making of a new note by Calhoun and Boteler, of like tenor and effect as the original. 2. That the sureties, Blessing and Lucas, were thereby discharged. 3. That Calhoun, in procuring the name of Boteler, did not act as the agent of the bank, and, therefore, as between him and the bank, Boteler is bound by the note, notwithstanding the fraud of Calhoun: *Farmers' and Traders' Bank* v. *Lucas*, 26 Ohio St.

Defence by one of Joint Makers for benefit of all.—Where the makers of a promissory note are sued jointly, an answer by one of the defendants, setting up as a defence that the consideration of the note was illegal interest, inures to the benefit of all the defendants: *Miller et al.* v. *Longacre et al.*, 26 Ohio St.

Where in such case there was a joint finding and judgment against all the defendants on the first trial, and they were allowed a second trial under the statute, the extent of their liability is the amount of the recovery on the second trial, notwithstanding the second trial proceeding may have been erroneously dismissed as to all except the defendant in whose name the answer was filed: *Id.*

Guarantor by Endorsement.—The payee of a negotiable promissory note, who, on transferring it to a third party, writes his name on the back and guarantees its payment at maturity, is a party to such note within the meaning of section 38 of the Code, and may be sued jointly with the maker: *Kautzman et al.* v. *Weirick et al.*, 26 Ohio St.

The liability of such party is, within the meaning of the section of the Code above referred to, substantially the same as that of an indorser who has waived demand and notice; *Id.*

Confederate States.

Illegal Contract—Title.—Property purchased by the Confederate States during the war passed to the United States at the restoration of peace by capture: *Whitfield* v. *The United States*, S. C. U. S. Oct. 1875.

Contracts of sale made in aid of the rebellion will not be enforced by

the courts, but completed sales occupy a different position. As a general rule, the law leaves the parties to illegal contracts where it finds them, and affords relief to neither: *Id.*

CONTRACT.

Affirmation and Subsequent Repudiation.—When one party to a contract insists upon annulling it, and brings suit for that purpose, and the other party thereto insists upon its validity and performance, and successfully defends upon the ground that it is valid and binding, such other party cannot, after the contract is thus established, and suit brought thereon to compel its performance on his part, defend on the ground of such attempted repudiation by the other party. His defence of the former suit would be a constant tender of performance on his part, and a waiver of any demand of performance, if any were necessary. And if such contract bear interest, such unsuccessful attempt at repudiation would not prevent the accruing of interest the while: *Sampson* v. *Warner*, 48 Vt.

Time of Payment—Parol Evidence to Vary Legal Effect of Contract.—When a contract signed by one party only is accepted by the other party, it becomes binding upon both parties, the same as if signed by both: *Brandon Man. Co.* v. *Morse*, 48 Vt.

A written contract for the sale and delivery of a certain quantity of wood at a stipulated price per cord, did not, in terms, fix the time of payment. *Held*, that the law fixed the time as on demand after delivery, and that the fact that the purchaser made voluntary payments to the vendor before delivery, did not vary the contract: *Id.*

Parol testimony is no more admissible to vary the clear and settled legal meaning and effect of a contract than it is to vary its terms. Thus, it was *held* incompetent to show by parol that at the time the above-mentioned contract was made the purchaser verbally agreed to pay for said wood as it was delivered: *Id.*

CORPORATION.

Conditional Subscription to Stock.—A subscription to the capital stock of a railroad company on the condition that its railroad shall pass through a certain place becomes absolute on the location of the road through the place named: *Mansfield, &c., Railroad Co.* v. *Stout*, 26 Ohio St.

Power of Director to loan Money to Corporation.—While it is true that a director of a corporation is bound by all those rules of conscientious fairness which courts of equity have imposed as the guides for dealing or contracting with the corporation, yet it cannot be maintained that any of those rules forbids one director among several from loaning money to the corporation when the money is needed, and the transaction is open and otherwise free from blame: *Oil Company* v. *Marbury*, S. C. U. S. Oct. 1875.

Purchasing in of Shares—Reduction of Capital.—An insolvent corporation cannot purchase in a portion of its capital stock: *Currier* v. *Lebanon Slate Co.*, 56 N. H.

A corporation, whose capital stock as fixed and limited has not been fully paid in, cannot relieve a delinquent stockholder from payment of

assessments upon his stock by a purchase of the same, especially against the objection of another stockholder: *Id.*

A corporation cannot reduce its capital stock, under the provisions of ch. 134, sect. 6, Gen. Stats., by purchasing the shares of any stockholder. In order that such reduction may operate justly to all the stockholders, each stockholder should be allowed to surrender such proportion of his stock as the amount of the proposed reduction bears to the whole amount of capital stock: *Id.*

DEBTOR AND CREDITOR. See *Husband and Wife.*

Fraudulent Sales—Retaining Possession by Vendor.—S., being indebted to C. and D., sold to them certain cattle and hay for $90, who indorsed the amount upon a note held by them against S. The sale was made in the presence of a witness. The cattle and hay were left in the possession of S. to feed the hay to the cattle, also to his own cow at his own expense; and it was agreed that the manure made by the cattle should become the property of S. The creditors of S. attached the cattle and hay as the property of S., and C. and D. replevied them. Upon the trial, these facts appearing, it was ruled that the sale was void as to creditors, and that the facts furnished no sufficient explanation of the retaining the possession of the property by S.; and a verdict was ordered for the defendant. *Held*, that the ruling was correct: *Cutting* v. *Jackson*, 56 N. H.

When the possession of chattels is retained by the vendor after an absolute sale, it is no sufficient explanation to show that the sale was made in the presence of a witness, where it was not attended with such publicity as would naturally give notoriety to the transaction, and when there was no change in the possession or use of the chattels to indicate that any change in the ownership had taken place: *Id.*

DEED.

Construction of Grant.—In a warranty deed of land was the following clause: "Also conveying the right to draw water from any and all the springs on said Clement's (the grantor's) land, easterly and above the aforesaid described premises, with the right to conduct the same by aqueduct to said premises, for all uses or purposes for ever." *Held*, that the grantee was entitled to take all the water from the springs, provided the same was in good faith required for use on the granted premises: *Stevenson* v. *Wiggin*, 56 N. H.

DRAFT.

Bill of Lading—Conditional Delivery.—M. & Co. having purchased wheat at Milwaukee and paid for it with their own money, consigned to the cashier of the Milwaukee bank and handed over to that bank the bills of lading as a security for the drafts drawn against it—drafts which the bank purchased. M. & Co. also sent invoices to S. & Co., who they expected would purchase the wheat. The Milwaukee bank sent the drafts with the bills of lading attached to the Merchants' Bank, Watertown, accompanied with the most positive instructions, by letter and by indorsement on the bills, to hold the wheat until the drafts were paid. Subsequently, the Merchants' Bank sent orders to the masters of the

carrying vessels to deliver it to the "Corn Exchange Elevator, Oswego, N. Y.," of which S. & Co. were the proprietors, and at the same time sent letters to S. & Co., containing clear instructions to hold the wheat and "deliver" it only on payment of the drafts. S. & Co., however, shipped it to the defendants, who received it and converted it to their own use. In an action brought by the bank of Milwaukee, *Held*, that the ownership of the wheat never passed out of the plaintiffs, and that the defendants were liable for its conversion: *Dows et al.* v. *The National Exchange Bank of Milwaukee*, S. C. U. S. Oct. 1875.

EVIDENCE. See *Contract.*

Declarations to Medical Attendants—Opinion of Non-professional Witnesses upon the Question of Insanity—Life Insurance.—In assumpsit upon a life insurance policy containing a proviso that the policy should be void if the assured committed suicide, the question was whether the assured was insane at the time he killed himself. It was *held* that his physician, who was consulted by him two or three weeks before his death, might testify to declarations then made by him, that, "at times he felt as if he must take his life—that he had an impulse to take his life," such declarations being directly in the line of inquiry that the physician would naturally make to ascertain the then present condition of his patient, and material to that end, and important as tending to show the nature and extent of the disease he was called upon to treat: *Hathaway's Adm'r* v. *National Life Ins. Co.*, 48 Vt.

The opinion of persons not experts, upon the question of insanity, is admissible in this state, when based upon facts within their own knowledge and observation to which they have testified; and the fact that such persons did not form their opinion at the time they saw and observed the facts testified to by them does not render their opinion inadmissible: *Id.*

The principle is well settled that physicians and surgeons of practice and experience are experts; and that their opinions are admissible in evidence upon questions that are strictly and legitimately embraced in their profession and practice; and it is not necessary that a witness of this class should have made the particular disease involved in the inquiry a speciality, in order to make his testimony admissible as an expert: *Id.*

Hypothetical questions may be put to medical experts, if the testimony tends to establish every supposed fact embraced therein. Nor are answers to such questions objectionable because they include considerations not referred to in the questions, as constituting the basis of the opinion given, and such as the testimony tends to prove and as might properly have been included in the questions: *Id.*

FOREIGN JUDGMENTS.

Judgment Rendered in one State open to Inquiry in another—Partnership Sued after Dissolution—One Partner not Served.—The jurisdiction of a foreign court over the person or subject-matter embraced in the judgment or decree of such court is always open to inquiry, and in this respect the court of another state is to be regarded as a foreign court: *Hall et al.* v. *Lanning et al.*, S. C. U. S. Oct. 1875.

A member of a partnership firm, residing in one state, cannot be ren-

dered personally liable in a suit brought in another state against him and his co-partners, although the latter be duly served with process, and although the law of the state where the suit is brought authorizes judgment to be rendered against him: *Id.*

Nor can his co-partners, after a dissolution of the partnership, without his consent and authority, implicate him in suits brought against the firm by voluntarily entering an appearance for him: *Id.*

Frauds, Statute of.

Parol Agreement to Convey Land.—The plaintiff being indebted to H. L. G., husband of the defendant, conveyed to him certain real estate, with the parol agreement that he would reconvey to the plaintiff upon payment of the debt. H. L. G. died without having reconveyed the premises. After his death, the plaintiff, for the purpose of restoring the legal title to himself, entered into a parol agreement with the administrator of the deceased and with the defendant, by the terms of which he was to be allowed a debt of $4042.16 against the estate of the deceased; the administrator was to obtain license and sell the premises. The plaintiff was to bid off the same at $5000, being the amount allowed the plaintiff against the estate, with $957.84 more still due from the plaintiff, according to the parol contract for a reconveyance; and the defendant at the same time agreed by parol to convey her right of dower to the plaintiff. The administrator obtained license, and sold the premises to the plaintiff for $5000, who paid $957.84 to the administrator (being the difference between $5000 and $4042.16), and received from him a deed of the premises. The administrator accounted for said sum as assets belonging to the estate. The defendant refused to convey her right of dower to the plaintiff, but demanded and caused the same to be set out to her. The plaintiff brought this suit to recover one-third part of said sum of $5000. *Held*, that the plaintiff could not recover: *Gordon* v. *Gordon*, 56 N. H.

Government.

Powers of Government de facto.—A government *de facto*, in firm possession of any country, is clothed while it exists with the same rights, powers, and duties, both at home and abroad, as a government *de jure*: *Phillips* v. *Payne*, S. C. U. S. Oct. 1875.

For certain purposes the states of the Union are regarded as foreign to each other: *Id.*

The state of Virginia is *de facto* in possession of the county of Alexandria, and her title has been undisputed since she resumed possession under the Act of Congress of July 9th 1846. The United States has no power, therefore, to consider the legislation of Virginia in reference to the county of Alexandria as void and of no effect: *Id.*

Guarantee.

Fraud—Delivery of Articles to Third Person.—In an action for the price of goods alleged to have been sold by the plaintiff to the defendant, and delivered to a third person in accordance with the terms of a written instrument signed by the defendant, purporting to be a contract of sale, it is not necessary, in order to defeat the action on the ground of fraud, to allege or prove that the goods were returned or offered to

be returned upon the discovery of the fraud, where it is shown that the goods were so delivered by the plaintiff without the authority of the defendant, and that the defendant signed the instrument in ignorance of its contents, on the false representation of the plaintiff that it was a mere recommendation of the goods described therein: *Martindale et al.* v. *Harris*, 26 Ohio St.

Such instrument in the hands of an assignee is subject to the same defences that might be made to it in the hands of the person to whom it was delivered: *Id.*

Husband and Wife.

Gift by Insolvent to his Wife.—An insolvent debtor purchased real estate for his wife, taking the title in her name, and as a gift to her advanced and paid $2460 of the purchase-money and cost of the property, the wife paying the balance, which was $4000. On a bill filed by a creditor of the husband, to subject the property to the payment of a debt of less than $2460, the court ordered the property to be sold, and that twenty-four hundred and sixty sixty-four hundred and sixtieths of the proceeds of sale be applied in payment of the debt. *Held*, that this decree was not erroneous to the prejudice of the wife, and that she was not entitled to be first paid her $4000 out of the proceeds: *Shaeffer* v. *Fithian, Jones & Co.*, 26 Ohio St.

Insanity. See *Evidence; Insurance.*

Insolvent. See *Husband and Wife.*

Insurance.

Avoidance of Policy by Suicide—Insanity.—Insanity short of delirium or frenzy whereby all power of self-will and control is lost, will excuse the act of suicide, and prevent the avoidance of a life insurance policy containing a proviso that it shall become void if the assured commits suicide: *Hathaway's Adm'r* v. *National Life Ins. Co.*, 48 Vt.

In assumpsit upon a policy containing such a proviso, the court charged the jury, that "if the assured had sufficient mind, reason and judgment to rationally consider and determine whether he preferred to die or to live, and, for any reason, determined that he preferred to die, and in pursuance of that determination, contemplating what he was doing, he took his own life, no recovery could be had upon the policy; that it was not enough to entitle a recovery, that at the time he took his life his mind was unsound to some extent, nor that it was so unsound that he could not distinguish right from wrong, but that it must have been so unsound that it could be seen that the unsoundness killed him; but that if his mind, reason and judgment became impaired, and an insane idea that he must take his own life entered his mind, and got hold of it, and his mind, reason and judgment grew weaker, and that idea stronger, until his mind was overturned, and the idea got control of his reasoning faculties and of him to that extent that he could not resist it, but was compelled to and did yield to it and take his life, so that, although his mind contrived the means by which his life was taken, and his physical strength carried them out and took it—in reality this insane idea or impulse, and not his mind and will, took his life—

the plaintiff was entitled to recover." *Held*, that the charge was quite as favorable to defendant as the law allowed: *Id.*

Condition against Alienation.—A policy of insurance which contains a condition that the insured property shall not be alienated or encumbered, may be avoided by the insurer where a sale or encumbrance is effected without his consent, although it is stipulated in the policy that consent to an assignment of the policy will be given by the insurer if requested within a certain time after sale of the insured property. Such stipulation binds the insurer to consent to an assignment of the policy to the purchaser only in case his consent has been given to the sale of the property: *Home Ins. Co.* v. *Lindsey et al.*, 26 Ohio St.

In an action on a policy of insurance which contains a condition that, in case of loss, proof of the loss shall be made and delivered to the insurer within thirty days after the loss occurred, the petition, which does not allege performance of such condition, or a waiver on the part of the insurer, is bad on demurrer: *Id.*

Landlord and Tenant.

Covenant to Pay Rent—Seizure of Property by the United States.—Where A. leased certain premises to B. for the period of five years from October 1st 1859, at the rent of $2000 per annum, payable in monthly instalments, and the property was seized by the military authorities of the United States on May 1st 1862, as abandoned property, and the lessee was compelled to pay rent to those military authorities: *Held*, that A. could not recover rent for B.'s possession of the premises for the time during which he was obliged to pay rent to the military authorities of the United States: *Harrison* v. *Myer, Executrix*, S. C. U. S. Oct. 1875.

Mill-Dam.

Mill Act of 1868—*Duty of Committee.*—By the Mill Act of 1868, it seems that the mill-owner may elect to what height he will raise the water on the land of riparian owners above; and the assessment of damages by the committee should be made upon the basis of such election: *Town* v. *Faulkner*, 56 N. H.

A mill-dam is a common and convenient instrument wherewith to measure and describe the extent of a water-right; but such right may be defined and limited by any other appropriate monument on the ground: *Id.*

A mill-owner erected a dam with the capacity of raising the water beyond his existing right, but provided with gates, &c., whereby he supposed it to be within his power to keep the water within the limits of his right; and it was always his intention so to manage the dam and gates as not to overstep his right, until he could arrange by contract with the owners of land above liable to be flowed. On a petition brought by a land-owner, under the act, it was *held*, that the actual interference with the water, and not such interference as was rendered possible by the height of the dam, was the proper basis for the assessment of damages: *Id.*

The committee, in such cases, should fix some suitable and permanent monument on the ground, to mark the limit of the right which is to

pass by virtue of the proceedings; and such monument should be carefully and accurately described in their report: *Id.*

Municipal Corporation.

Assessment for Street Improvements—Partial Completion of the Work.—For the purpose of connecting two public thoroughfares, a street improvement was ordered, which was to be paid for by assessment on the owners of the abutting property. After the work had been completed part of the way, it was suspended or abandoned, leaving a part of the proposed street wholly unopened. *Held*, that an assessment for the work already done was premature and unauthorized: *Cincinnati for the use of Wirth* v. *Cincinnati and Spring Grove Avenue Co.*, 26 Ohio St.

Powers of.—Counties, cities and towns are municipal corporations, created by the authority of the legislature, and they derive all their powers from the source of their creation, except where the constitution of the state otherwise provides: *County Commissioners* v. *County Commissioners et al.*, S. C. U. S. Oct. 1875.

Division of.—If a part of the territory and inhabitants of a municipal corporation are separated from it, by annexation to another or by the erection of a new corporation, the former corporation still retains all its property, powers, rights and privileges, and remains subject to all its obligations and duties, unless some new provision should be made by the act authorizing the separation: *Id.*

Regulations upon the subject may be prescribed by the legislature, but if they omit to make any provision in that regard, the presumption must be that they did not consider that any legislation in the particular case was necessary. Where the legislature does not prescribe any such regulations, the rule is that the old corporation owns all the public property within her new limits and is responsible for all debts contracted by her before the act of separation was passed: *Id.*

Through what Agency it Acts.—A municipal corporation may act through its mayor, through its common council or its legislative department by whatever name called, its superintendent of streets, commissioner of highways or board of public works, provided the act is within the province committed to its charge. Nor can it in principle be of the slightest consequence by what means these several officers are placed in their position, whether they are elected by the people of the municipality or appointed by the president or a governor. The people are the recognised source of all authority, state and municipal, and it is to this authority it must come at last, whether immediately or by a circuitous process: *Barnes* v. *The District of Columbia*, S. C. U. S. Oct. 1875.

Partnership. See *Foreign Judgment.*

Quo Warranto.

Irregularity in Elections—Acquiescence.—Upon a petition for a writ of quo warranto, to inquire by what right a person holds the office of prudential committee of a school district, the writ will be denied when

it appears that the petitionee was elected without objection, upon the mistaken understanding of the voters that there had been no election upon a prior balloting, although it turns out that in fact another person was elected, who, at the same meeting, being ignorant of his election, disqualified himself from holding the office by accepting another incompatible therewith, and that all the voters acquiesced therein: *Cate* v. *Furber*, 56 N. H.

RAILROAD. See *Corporation.*

Evidence under the General Issue in Case—Right to Eject Passengers from Cars for Non-payment of Fare—Exemplary Damages.—In trespass on the case anything is admissible in evidence under the general issue that shows that the defendant is not guilty of anything actionable in respect to the matters charged in the declaration: *Jerome* v. *Smith et al.*, 48 Vt.

Plaintiff bought a ticket over defendants' railroad, with checks attached. While riding over the route that his ticket took him, one conductor detached and retained one of the checks, and gave him in lieu thereof a conductor's check that was a full equivalent for the check retained. Before plaintiff arrived at the point in his journey to which the conductor's check took him, another conductor took the train, whereupon plaintiff looked for his conductor's check, but could not find it.

The second conductor demanded of him the production of the conductor's check or the payment of fare, and refused to let him ride on his ticket; and upon plaintiff's neglecting and refusing to comply with the demand, the conductor ejected him from the train at a station, using no unnecessary force. *Held*, that he was lawfully ejected: *Id.*

Semble, In no case has a plaintiff any *legal right* to exemplary damages. Such damages depend upon the case and the evidence and the finding of the jury: *Id.*

SALE. See *Contract; Debtor and Creditor.*

SET OFF.

Damages for Malicious Prosecution.—When a party has probable cause for instituting a suit in which he fails, the taxable costs are the measure of defendant's damages for the institution and prosecution thereof. If suit be brought without such cause, a suit for malicious prosecution is the remedy, and such claim is not the proper subject of recoupment or offset in a suit subsequently brought upon a contract, in violation of which the former suit was brought: *Sampson* v. *Warner*, 48 Vt.

SHIPPING

General Average—Repairs at Intermediate Port subject of.—Temporary repairs of damages arising from extraordinary perils of the sea, made at some intermediate port for the purpose of prosecuting the voyage, if the damage to the ship was of a character to disable her and to interrupt the voyage, are the proper objects of general average: *Hobson et al.* v. *Lord*, S. C. U. S. Oct. 1875.

Wages.—The wages and provisions of the officers and crew during the consequent and necessary *interruption* of the voyage, occasioned by the disaster, are a proper charge for such proportionate contribution, wholly irrespective of the question whether the ship bore away for repairs to a port of refuge outside of the regular course of the voyage, or whether the necessary repairs were executed in the port where the disaster occurred: *Id.*

Statute.

Construction of Retrospective—Account.—The Act of 1872, providing that "the judgment to account in the common-law action of account, shall not debar the defendant from making any defence before the auditor which he might have made by special plea in bar of the action if said judgment to account had not been rendered," is not retrospective and does not apply to a case in which judgment to account was rendered and an auditor appointed before the passage of the act, but wherein the account was not taken until after its passage: *Sturgis* v. *Hull*, 48 Vt.

When the language of a statute is such that it will admit of either construction, if it appears that a retrospective construction is necessary, to accomplish and carry into effect the intent and purpose of the legislature, and no substantial rights are thereby impaired or destroyed, and no wrong done, or when a statute is purely remedial, and does not take away vested rights, such a construction will be put upon it; otherwise it will be considered as prospective: *Id.*

Time. See *Vendor.*

Vendor and Purchaser.

Time—When of Essence of Contract—United States Notes—Specific Performance where Title to part of Land fails.—Where a party makes an offer to sell on specified terms, giving the proposed purchaser the option to accept the terms within a limited period, time is to be regarded as of the essence of the offer, and an acceptance of the terms after the period limited will not be binding: *Longworth* v. *Mitchell*, 26 Ohio St.

United States treasury notes are a lawful tender upon contracts stipulating for the payment of money generally, whether made before or after the date of the law under which the notes were issued; and this rule applies as well in equity as at law, and as well where by the contract the payment is optional with the party and his rights made to depend upon it, as where the payment is required by the contract: *Id.*

Where a tenant-in-common of land contracts for the sale and conveyance of the entire land, with a purchaser who in good faith believes him to be sole owner, on a bill filed by such purchaser for a specific execution of the contract, equity will decree a conveyance by the vendor of his interest in the land, and a compensation in money for the value of the outstanding interest: *Id.*